

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YAHOO! INC.,
Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,
Defendant.

Case No. [5:17-cv-00489-EJD](#)

**ORDER RE FINAL JURY
INSTRUCTIONS AND VERDICT
FORM**

The purpose of this Order is to notify the parties of the court's intended rulings on the parties' outstanding jury instructions and verdict form disputes.

A. Jury Instructions

The court intends to give the following version of Final Jury Instruction No. 16:

If you decide that Yahoo has proved its claim against National Union, you also must decide how much money will reasonably compensate Yahoo for the harm. This compensation is called "damages."

The amount of damages must include an award for all harm that was caused by National Union, even if the particular harm could not have been anticipated.

Yahoo must prove the amount of its damages. However, Yahoo does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. You must not speculate or guess in awarding damages. You must not include in your award any damages to punish or make an example of National Union.

The following are the specific items of damages claimed by Yahoo for bad faith:

1. The amount Yahoo incurred to defend the *In re Yahoo Mail*

Case No.: [5:17-cv-00489-EJD](#)

ORDER RE FINAL JURY INSTRUCTIONS AND VERDICT FORM

Litigation (i.e., the consolidated *Holland, Kevranian, Nobles, and Zelaya* lawsuits).

2. The amount Yahoo paid to settle the *In re Yahoo Mail Litigation* (i.e., the consolidated *Holland, Kevranian, Nobles, and Zelaya* lawsuits).
3. The cost of reasonable attorney fees incurred to obtain policy benefits. To recover attorney fees, Yahoo must prove that because of National Union's breach of the obligation of good faith and fair dealing it was reasonably necessary for it to hire an attorney to recover the policy benefits.

The additional language National Union requests—"Yahoo may recover attorney fees it incurred to obtain policy benefits but not attorney fees it incurred for other purposes"—is omitted because it is inconsistent with item number 1 and may confuse the jury.

B. Final Verdict Form

The court intends to adopt Yahoo's version of Question Nos. 2 and 3 because they track Final Jury Instruction No. 16.

The court intends to adopt National Union's proposed instructions inserted between Question 3 and 4, as modified below:

Answer Question 4 if you awarded any damages in response to Question 3. If you awarded no damages in response to Question 3, stop here, answer no further questions, and have the foreperson sign and date this form.

"[A]ctual damages, even nominal damages, are an absolute predicate for an award of punitive damages." *Amerigraphics, Inc. v. Mercury Casualty Co.*, 182 Cal. App. 4th 1538, 1557 (2010).

IT IS SO ORDERED.

Dated: May 17, 2019



EDWARD J. DAVILA
United States District Judge